

**Illinois Department of Revenue  
Regulations**

<b>Title 86 Part 160 Section 160.150 Claims To Recover Erroneously Paid Tax—Limitations—Procedures</b>
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**TITLE 86: REVENUE**

**PART 160  
SERVICE USE TAX**

**Section 160.150    Claims To Recover Erroneously Paid Tax--Limitations--Procedures**

a)      Limitations Upon Claims

- 1)      If it shall appear that an amount of tax or penalty or interest has been paid in error under the Service Use Tax Act to the Department by a purchaser, as distinguished from the serviceman, whether the amount be paid through a mistake of fact or an error of law, the purchaser may file a claim for credit with the Department.
  
- 2)      If it shall appear that an amount of tax or penalty or interest has been paid in error to the Department under the Service Use Tax Act by a serviceman who is required or authorized to collect and remit the Service Use Tax, whether the amount be paid through a mistake of fact or an error of law, the serviceman may file a claim for credit with the Department, provided that no credit shall be allowed for any amount paid by any serviceman unless it shall appear that he bore the burden of the amount and did not shift the burden to anyone else (as in the case of a duplicated tax payment which the serviceman made to the Department and did not collect from anyone else), or unless it shall appear that he or his legal representative has unconditionally repaid the amount to his vendee:
  - A)      Who bore the burden and has not shifted the burden directly or indirectly in any manner whatsoever;
  - B)      who, if he has shifted the burden, has repaid unconditionally the amount to his own vendee, and
  - C)      who is not entitled to receive any reimbursement therefor from any other source than from his vendor, nor to be relieved of the burden in any other manner whatsoever.

Claimant will be considered to have satisfied the unconditional repayment requirement where it provides its purchaser with an instrument upon which the customer can make a demand upon claimant for payment of the tax recovered if the claim is allowed. The claimant's provision of unconditional promissory notes or irrevocable credit memoranda to its purchasers who paid tax in error would satisfy this requirement. The purpose of requiring the claimant to make an

unconditional repayment to its purchasers is to prevent unjust enrichment on the part of the claimant. Therefore, in order to establish that it was not unjustly enriched, the claimant filing a claim for credit must be able to demonstrate that it gave unconditional promissory notes or irrevocable credit memoranda to its purchasers who paid tax in error to the claimant.

- 3) If it shall appear that an amount of tax has been paid in error under the Service Use Tax Act by the purchaser to a serviceman, who retained the tax as reimbursement for his tax liability on the same sale under the Service Occupation Tax Act, and who remitted the amount involved to the Department under the Service Occupation Tax Act, whether the amount be paid through a mistake of fact or an error of law, the procedure for recovering the tax shall be that prescribed in Sections 17, 18 and 20 of the Service Occupation Tax Act.
- 4) As to any claim for credit filed with the Department on and after January 1 but on or before June 30 of any given year, no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under the Service Use Tax Act) more than 3 years prior to such January 1 shall be credited, and as to any claim filed on and after July 1 but on or before December 31 of any given year, no amount of tax or penalty or interest erroneously paid (either in total or partial liquidation of a tax or penalty or amount of interest under the Service Use Tax Act) more than 3 years prior to the July 1 shall be credited.
- 5) No claim shall be allowed for any amount paid to the Department, whether paid voluntarily or involuntarily, if paid in total or partial liquidation of an assessment which had become final before the claim for credit to recover the amount so paid is filed with the Department, or if paid in total or partial liquidation of a judgment, order or decree of court.

b) Filing Of Claims

- 1) Claims for credit shall be prepared and filed upon forms provided by the Department. Where the claimant is a corporation, the claim filed on behalf of the corporation shall be signed by the president, vice-president, secretary or treasurer or by the properly accredited agent of the corporation.
- 2) A claim for credit shall be considered to have been filed with the Department on the date upon which it is received by the Department. Upon receipt of any claim for credit filed under the Act, any officer or employee of the Department, authorized in writing by the Director of Revenue to acknowledge receipt of the claims on behalf of the Department, shall execute on behalf of the Department, and shall deliver or mail to the claimant or his duly authorized agent, a written receipt, acknowledging that the claim has been filed with the Department, describing the claim in sufficient detail to identify it and stating the date upon which the claim was received by the Department. The written receipt shall be prima facie evidence that the Department received the claim described in the receipt and shall be prima facie evidence of the date when the claim was received by the Department.

- 3) In the absence of a written receipt, the records of the Department as to when the claim was received by the Department, or as to whether or not the claim was received at all by the Department, shall be deemed to be prima facie correct upon these questions in the event of any dispute between the claimant (or his legal representative) and the Department concerning these questions. (See Section 17 of the Service Use Tax Act.)

c) Procedure After Filing Of Claims

- 1) The Department will examine each claim for credit as soon as practicable after the claim is filed and will notify the claimant (or his legal representative, if the claim is filed by the legal representative, or if the claimant has died or become incompetent and the legal representative has notified the Department of his appointment and qualification as the legal representative, or if the Department, on its own motion, has substituted the legal representative in the proceeding for the deceased or incompetent claimant) of its Tentative Determination of the amount of credit, if any, to which the claimant or his legal representative is entitled.
- 2) If the claimant, or the legal representative of a deceased or incompetent taxpayer, shall, within 60 days after the Department's Notice of Tentative Determination of Claim, file a protest and request a hearing, the Department shall give notice to the claimant, or to the legal representative of a deceased or incompetent taxpayer, of the time and place fixed for the hearing, and shall hold a hearing in conformity with the provisions of the Act, and pursuant to that hearing shall issue its Final Determination of the amount of credit, if any, found to be due as a result of the hearing, to the claimant, or to the legal representative of a deceased or incompetent taxpayer.
- 3) If a protest to the Department's Notice of Tentative Determination of Claim is not filed within 60 days and a request for a hearing is not made, the said Notice shall become and operate as a Final Determination. (See Section 18 of the Act.)

d) Use Of Credit Memoranda To Satisfy Prior Rights of Department

- 1) If, following the above procedure, a credit is found to be due, as evidence thereof a credit memorandum for the amount shall be issued in the name of the claimant. If there is an established unpaid assessment or an admitted unpaid liability under the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, the Use Tax Act, any local occupation or use tax administered by the Department, Section 4 of the Water Commission Act of 1985 [70 ILCS 3720/4], subsections (b), (c) and (d) of Section 5.01 of the Local Mass Transit District Act [70 ILCS 3610/5.01], or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act [70 ILCS 3615/4.03], or unpaid penalty, or interest, against the claimant, the amount of the credit shall be credited against the tax or penalty or interest due. If the credit is in an amount less than that of the unpaid liability, it shall be applied pro tanto.
- 2) If the amount of the credit exceeds that of the unpaid liability, after crediting an amount sufficient to liquidate or cancel out the unpaid liability, a new credit

memorandum shall be issued for an amount representing the difference between that of the original credit found to be due and that of the liability liquidated or paid, and the new credit memorandum shall be delivered to the person entitled to receive delivery, provided that no proceeding is pending against the claimant to establish an unpaid liability under the Service Use Tax Act, the Service Occupation Tax Act, the Retailers' Occupation Tax Act, the Use Tax Act, any local occupation or use tax administered by the Department, Section 4 of the Water Commission Act of 1985, subsections (b), (c) and (d) of Section 5.01 of the Local Mass Transit District Act, or subsections (e), (f) and (g) of Section 4.03 of the Regional Transportation Authority Act.

- 3) If a proceeding to establish an unpaid liability is pending, the credit memorandum shall be held by the Department until the proceeding is concluded. If the proceeding results in the issuance of an assessment which becomes final under any of these Acts, the credit shall be applied by the Department, to the extent which may be necessary, in liquidation of the assessment, and any interest that may accrue, and the balance of the credit, if any (after cancellation of the credit memorandum applied in liquidation of the liability), shall be issued in the form of a new credit memorandum and delivered to the person entitled to receive delivery.

(Source: Amended at 27 Ill. Reg. 822, effective January 3, 2003)